IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH NAGPUR

Second Appeal Nos. 289, 358, 361 of 2006

Office Notes, Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders. : Court's or Judge's orders

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Mr. V.A. Masodkar, Adv. for the appellants.
Mr. R.S. Sundaram, Adv. for the respondents.
(in all the appeals)

CORAM : A.P. Lavande, J.
Dated : October 13, 2006

P.C.

Heard learned counsel for the parties.

All these three appeals arise out of common judgment passed by Additional District Judge, Akola allowing Regular Civil Appeal Nos. 73, 74 and 75 of 2002 filed by the respondents against judgments and decrees dated 20.1.2000 passed in Regular Civil Suit Nos. 168, 167 and 169 of 1994 filed by the respondents-plaintiffs. Since the facts involved in all three appeals are almost identical, they are disposed of by common order.

The plaintiffs were running S.T.D., P.C.O. Booths as licensees on commission basis at different places. While installing the booths of the plaintiffs, the defendants installed monitors prepared by Ms. Anjali Enterprises, Varodara which were approved by the defendants. The monitors were showing pulse rate and customers were to be charged for the period for which call was made. It was the case of the plaintiffs that they received bills for the amount in excess of the metered calls at the monitor. The plaintiffs made several complaints to the defendants. The defendants issued notices dated 5.3.1994 calling upon them to pay difference in the bill amounts which was due from them. The notices were challenged by filing suits for declarations that the notices were illegal. The plaintiffs further sought perpetual injunction restraining the defendants from recovering the amounts from the plaintiffs. The suits were contested. It was the case of the defendants that there was no fault in the meters and monitors. The

trial Court held that the Civil Court had jurisdiction to decide the suits and further that the defendants had issued incorrect bills. Consequently, the trial Court decreed the suits.

The defendants in the above suits preferred three different appeals which were disposed of by common judgment. The appellate Court held that since the plaintiffs had not produced bills prepared at their centers, it was not possible to hold that the bills issued were illegal. The lower appellate Court allowed the appeals holding that the plaintiffs had not discharged the burden of proving the bills were illegal and consequently, allowed the appeals.

Mr. Masodkar, learned counsel appearing for the appellants submitted that the lower appellate Court erred in law in allowing the appeals without dealing with the reasons given by the trial Court, while decreeing the suits filed by the plaintiffs. He invited my attention to the evidence of Pandurang who was examined on behalf of

the defendant and submitted that there are clear admissions made in favour of the plaintiffs in the evidence of the said witness. According to learned counsel, judgment and decree passed by the lower appellate Court allowing the decree deserves to be quashed and set aside.

Per contra, Mr. Sundaram, learned counsel appearing on behalf of the respondents submitted that in view of the fact that the plaintiffs had not produced the bills at their centers, the contention of the plaintiffs that the bills were illegal cannot be accepted and, therefore, the lower appellate Court was right in holding that the plaintiffs had not proved that the notices were issued to them were illegal.

I have considered the submissions made by learned counsel. I have also perused the judgments passed by the trial Court as well lower appellate Court. No doubt, the lower appellate Court has not analysed the evidence led by the parties, but that by itself, is not sufficient to set aside

the decree passed by the lower appellate Court. Since the plaintiffs were claiming that the notices issued to them claiming difference in the amounts of the bills, it was for the plaintiffs to establish that the amounts due in the notices were not due and payable. That being the position, the finding of the lower appellate Court that in the absence of the bills at the centers being produced, it cannot be said that the notices issued by the defendants were illegal cannot be said to be perverse warranting interference in second appeal. In my opinion, the finding given by the lower appellate court that the plaintiffs had not discharged the burden of proving that the notices issued them were illegal cannot be said to be perverse warranting interference in second appeal. Insofar as so called admissions made by witness examined on behalf of the defendants is concerned, upon reading the evidence as a whole, I do not find any admission or statement made by the said witness which establishes that the notices issued to the plaintiffs were illegal.

That being the position, I do not find any perversity in the finding given by the lower appellate Court that the plaintiffs had failed to prove that the notices were illegal.

For the reasons aforesaid, I do not find any merit in the second appeals. No substantial question of law is involved in any of the three appeals. Hence, the appeals are rejected.

JUDGE

A.